

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America,) CRIMINAL NO. 3:10-585-CMC
)
)
 v.) **OPINION and ORDER**
)
)
Tito Dewayne Titus,)
)
 Defendant.)
)

This matter is before the court on Defendant's motion for Reduction of Sentence "in light of the November 1st 2010 [sic] Amendments to the U.S.S.G." Mot. at 1 (ECF No. 79, filed Aug. 29, 2011). The Government has not responded to Defendant's motion.

Defendant contends that "a new set of rules for the amendments will enter into effect," and he asks this court "to apply these amendments as a greater range of sentencing options . . . is now applicable." *Id.*

Title 18, United States Code Section 3582(c)(2) provides that a sentencing court may not modify a term of imprisonment after its imposition except in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o). Additionally, for Defendant to receive any benefit from a change in the Guidelines, the particular Guideline must be made retroactively applicable. U.S.S.G. § 1B1.10.

Defendant was sentenced on November 18, 2010. To the extent Defendant seeks the application of any relevant sentencing guideline sections in effect as of November 1, 2010, he received the benefit of these amendments at sentencing. If Defendant seeks relief pursuant to any amendments to the Guidelines which are due to go into effect November 1, 2011, only Parts A and C of Amendment 750 may be considered for retroactive application.¹ No other provisions of the

¹Part A amended the Drug Quantity Table in §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses) for "crack"

November 1, 2011, amendments has been designated for retroactive application. Defendant was convicted of unlawful re-entry into the United States by an alien previously deported subsequent to a conviction for an aggravated felony, a violation of 8 U.S.C. §§ 1326(a) and (b)(2). Therefore, to the extent any portion of the pending amendments could be applicable to Defendant, it will not have retroactive effect.

Accordingly, Defendant's motion is **denied**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON McGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
September 19, 2011

cocaine and made related revisions to Application Note 10 to §2D1.1. Part C deleted the cross reference in §2D2.1 (Unlawful Possession) under which an offender who possessed more than 5 grams of “crack” cocaine was sentenced under §2D1.1.